



THE CITY OF SAN DIEGO

Historical Resources Board

DATE ISSUED: July 18, 2008 REPORT NO. HRB-08-052

ATTENTION: Historical Resources Board
Agenda of July 24, 2008

SUBJECT: **ITEM 12 – PROPOSED CHANGES TO THE MILLS ACT PROGRAM**

DESCRIPTION: Consider proposed changes to the current Mills Act program and make recommendations on the proposed changes to the San Diego City Council.

STAFF RECOMMENDATION

HRB Staff recommends that the Board make the following recommendations to the San Diego City Council related to the Mills Act Program:

1. Set an annual fiscal limit for Mills Act agreements based on new revenue loss to the general fund and do not set an aggregate limit for the total number of Mills Act agreements.
2. Establish eligibility requirements for new Mills Act agreements and retain current discretion within Redevelopment Areas. Require historic designation by December 31 of the year preceding the application for a Mills Act agreement and require the property owner to meet at least one of the following criteria where granting an agreement would:
 1. substantially contribute to the preservation of a historical resource threatened by deterioration or abandonment;
 2. enhance opportunities for maintaining or creating affordable housing;



3. facilitate preservation and maintenance of a property in cases of economic hardship; or,
4. support substantial reinvestment in a historical resource and/or rehabilitation of a historical building or structure.
3. Change the application deadline to March 31 of each year.
4. Add a requirement for a 10-year tailored agreement with annual renewal for every property to achieve necessary rehabilitation or implement a restoration plan and retain the requirement for visibility of the resource from the public right-of-way.
5. Establish an inspection schedule for monitoring of Mills Act properties prior to a new agreement and every 5 years thereafter prior to the renewal date.
6. Establish cost recovery fees for implementation of the Mills Act program, as follows: \$590 for agreement (one time); \$492 monitoring fee paid at time of agreement and every 5 years; and \$949 enforcement fee only if needed.

BACKGROUND

The Mills Act was enacted in 1972 by the State of California to enable local jurisdictions “to enter into contracts with property owners of qualified historic properties who actively participate in the restoration and maintenance of their historic properties while receiving property tax relief” (see Attachment 1). The San Diego City Council adopted Council Policy 700-46 in 1995 “to provide a monetary incentive to the owners of historically designated properties in the form of a property tax reduction for the maintenance, restoration and rehabilitation of historic properties within the City of San Diego” (Attachment 2). The first Mills Act agreement was recorded in 1996. During the past 12 years the number of agreements has increased substantially and the program is the most active one within the State. As of June 2008, there are approximately 901 effective Mills Act agreements for historic properties within the City.

Review of the City’s Mills Act program began in 2004 with a focus on changing the fee structure from a percentage of the property’s assessed value up to a maximum of \$400 to a cost recovery fee that would provide sufficient revenue to the City to pay the cost of the service being offered in preparation and monitoring of Mills Act agreements. This initial review of the program included an acknowledgement by the City that sufficient monitoring and inspection of Mills Act properties was not occurring. While staff observes the conditions of designated historic properties while conducting site visits for other nominated properties and project reviews, there is no formal monitoring or inspection procedure. The fee structure developed at this time included the costs for staff time to monitor existing Mills Act properties along with time to prepare new agreements. Staff met with preservation stakeholders several times between 2004 and 2006 to discuss the fee proposal and need for more formal inspections of Mills Act properties.

As part of this process, staff researched how other California cities and counties implemented the Mills Act. A number of cities, large and small, throughout the State were contacted to obtain information about their programs. Categories of information included numerical limits, eligibility requirements, application deadline, contract requirements, inspection requirements, and fee. The data was compiled and compared to the City’s program. Staff presented information comparing the City’s overall Mills Act program with other jurisdictions’ programs

and the potential for changes to the HRB Policy Subcommittee during 2006 and 2007. A draft proposal for changes to the City's program was presented to the HRB Policy Subcommittee in January 2008.

There was much public interest and concern about the proposed changes expressed at the Policy Subcommittee meeting and to staff and the Mayor's office following the meeting. Staff continued to research other jurisdictions' programs and refine the proposed changes, considering public input and the City's desire to increase the effectiveness of the program and assure compliance with performance requirements. A revised proposal was presented to the Community Planners Committee in March 2008. Again, concern about the proposed changes was expressed. In order to provide the broadest public review and obtain the greatest public input possible, the HRB held two workshops, in April and June 2008. Every owner of a designated historic property or of a nominated property was notified by mail of these workshops. A very significant number of people attended the workshops. Many individuals expressed opposition to specific changes being proposed by staff. However, there was general agreement with some changes related to an earlier application deadline, need for tailored agreements that include appropriate maintenance and/or rehabilitation, an inspection schedule, and reasonable fees. There remains strong opposition to any change in the program that would limit the number of new contracts or add eligibility requirements for new contracts. Attachment 3 provides a summary of the issues raised by Board members and the public, the City's response to the issues raised, and background information related to the issues.

ANALYSIS

It is the City's position that changes to the current Mills Act program are warranted for a number of reasons. The program was established at a time when the City was not able to regulate the preservation of historical resources and with only minimal oversight provided for monitoring of Mills Act properties. The Land Development Code now includes historical resources regulations and it is understood that formal monitoring of agreements is necessary. There is a desire on the part of the City to improve accountability of the overall program and to understand and manage the fiscal impacts of the program on an annual basis.

Proposed changes are compared to the existing program in Attachment 4. A discussion of the implementation of each change and the effect of the proposed change on property owners is included, as well.

Although minimal in overall City budget, staff believes it is important to understand the fiscal impact of the program and manage it on an annual basis. The current loss is of property tax revenue to the City's General Fund is \$1,126,073 from Mills Act property valuations. Setting a fiscal limit would not eliminate the program and is not expected to reduce the current level of new yearly contracts. For example, a limit of \$100,000 to \$150,000 new loss would result in an average of 78 to 118 new contracts yearly. The average number of new contracts annually is approximately 75.

The intent of including eligibility criteria as a requirement for obtaining a Mills Act agreement is to address other General Plan policies through the directed use of new Mills Act contracts and

prioritize new contracts for properties that are in immediate need of rehabilitation or restoration efforts; to help to achieve citywide housing needs; in situations when ordinary maintenance of a historic property is economically prohibitive; and for owners that can demonstrate the tax savings would support substantial reinvestment in their historic property.

Based on research related to other California jurisdictions, the City's stated desire to have a program that is highly accountable and to understand and manage the fiscal impacts of the program, staff recommends the HRB make the following recommendations to the City Council:

1. Set an annual fiscal limit for Mills Act agreements based on new revenue loss to the general fund and do not set an aggregate limit for the total number of Mills Act agreements.
2. Establish eligibility requirements for new Mills Act agreements and retain current discretion within Redevelopment Areas. Require historic designation by December 31 of the year preceding the application for a Mills Act agreement and require the property owner to meet at least one of the following criteria where granting an agreement would:
 1. substantially contribute to the preservation of a historical resource threatened by deterioration or abandonment;
 2. enhance opportunities for maintaining or creating affordable housing;
 3. facilitate preservation and maintenance of a property in cases of economic hardship; or,
 4. support substantial reinvestment in a historical resource and/or rehabilitation of a historical building or structure.
3. Change the application deadline to March 31 of each year.
4. Add a requirement for a 10-year tailored agreement with annual renewal for every property to achieve necessary rehabilitation or implement a restoration plan and retain the requirement for visibility of the resource from the public right-of-way.
5. Establish an inspection schedule for monitoring of Mills Act properties prior to a new agreement and every 5 years thereafter prior to the renewal date.
6. Establish cost recovery fees for implementation of the Mills Act program, as follows: \$590 for agreement (one time); \$492 monitoring fee paid at time of agreement and every 5 years; and \$949 enforcement fee only if needed.

CONCLUSION

In conclusion, staff recommends a number of changes to the existing Mills Act program to improve accountability and manage the fiscal impact.



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- Attachment:
1. OHP Technical Bulletin
 2. San Diego City Council Policy
 3. Issues Matrix
 4. Summary of Existing Program and Proposed Changes Matrix

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Mills Act Property Tax Abatement Program

Purpose of the Mills Act Program

Economic incentives foster the preservation of residential neighborhoods and the revitalization of downtown commercial districts. The Mills Act is the single most important economic incentive program in California for the restoration and preservation of qualified historic buildings by private property owners.

Enacted in 1972, the Mills Act legislation grants participating local governments (cities and counties) authority to enter into contracts with owners of qualified historic properties who actively participate in the restoration and maintenance of their historic properties while receiving property tax relief.

Benefits to Local Governments

The Mills Act allows local governments to design preservation programs to accommodate specific community needs and priorities for rehabilitating entire neighborhoods, encouraging seismic safety programs, contributing to affordable housing, promoting heritage tourism, or fostering pride of ownership. Local governments have adopted the Mills Act because they recognize the economic benefits of conserving resources and reinvestment as well as the important role historic preservation can play in revitalizing older areas, creating cultural tourism, building civic pride, and retaining the sense of place and continuity with the community's past.

A formal agreement, generally known as a Mills Act or Historical Property Contract, is executed between the local government and the property owner for a minimum ten-year term. Contracts are automatically renewed each year and are transferred to new owners when the property is sold. Property owners agree to restore, maintain, and protect the property in accordance with specific historic preservation standards and conditions identified in the contract. Periodic inspections by city or county officials ensure proper maintenance of the property. Local authorities may impose penalties for breach of contract or failure to protect the historic property. The contract is binding to all owners during the contract period.

Benefits to Owners

Owners of historic buildings may qualify for property tax relief if they pledge to rehabilitate and maintain the historical and architectural character of their properties for at least a ten-year period. The Mills Act program is especially beneficial for recent buyers of historic properties and for current owners of historic buildings who have made major improvements to their properties.

Mills Act participants may realize substantial property tax savings of between 40% and 60% each year for newly improved or purchased older properties because valuations of Mills Act properties are determined by the Income Approach to Value rather than by the standard Market Approach to Value. The income approach, divided by a capitalization rate, determines the assessed value of the property. In general, the income of an owner-occupied property is based on comparable rents for similar properties in the area, while the income amount on a commercial property is based on actual rent received. Because rental values vary from area to area, actual property savings vary from county to county. In addition, as County Assessors are required to assess all properties annually, Mills Act properties may realize slight increases in property taxes each year.

Qualified Historic Property

A qualified historic property is a property listed on any federal, state, county, or city register, including the *National Register of Historic Places*, *California Register of Historical Resources*, California Historical Landmarks, State Points of Historical Interest, and locally designated landmarks. Owner-occupied family residences and income-producing commercial properties may qualify for the Mills Act program.

OHP's Role

OHP provides technical assistance and guidance to local governments and property owners. OHP maintains a current list of communities participating in the Mills Act program and copies of Mills Act ordinances, resolutions, and contracts that have been adopted. OHP does not participate in the negotiations of the agreement and is not a signatory to the contract.

For Additional Information

Contact the planning department of the city or county within which the historic property is located.

California's four largest cities (Los Angeles, San Diego, San Francisco, and San Jose) as well as more than 75 other city and county governments have instituted Mills Act programs. A list of communities participating in the Mills Act Program is available online at http://www.ohp.parks.ca.gov/default.asp?page_id=21412.

For additional information on the Mills Act, please contact MaryIn Lortie in the Office of Historic Preservation, PO Box 942896, Sacramento CA 94296-0001, (916) 653-8911, mlort@ohp.parks.ca.gov.

California State Codes Relating to Mills Act Program

California Government Code, Article 12, Sections 50280 - 50290

50280. Restriction of property use.

Upon the application of an owner or the agent of an owner of any qualified historical property, as defined in Section 50280.1, the legislative body of a city, county, or city and county may contract with the owner or agent to restrict the use of the property in a manner which the legislative body deems reasonable to carry out the purposes of this article and of Article 1.9 (commencing with Section 439) of Chapter 3 of Part 2 of Division 1 of the Revenue and Taxation Code. The contract shall meet the requirements of Sections 50281 and 50282.

50280.1. Qualified historic property.

"Qualified historical property" for purposes of this article, means privately owned property which is not exempt from property taxation and which meets either of the following:

(a) Listed in the National Register of Historic Places or located in a registered historic district, as defined in Section 1.191-2(b) of Title 26 of the Code of Federal Regulations.

(b) Listed in any state, city, county, or city and county official register of historical or architecturally significant sites, places, or landmarks.

50281. Required contract provision.

Any contract entered into under this article shall contain the following provisions:

(a) The term of the contract shall be for a minimum period of 10 years.

(b) Where applicable, the contract shall provide the following:

(1) For the preservation of the qualified historical property and, when necessary, to restore and rehabilitate the property to conform to the rules and regulations of the Office of Historic Preservation of the Department of Parks and Recreation, the United States Secretary of the Interior's Standards for Rehabilitation, and the State Historical Building Code.

(2) For the periodic examinations of the interior and exterior of the premises by the assessor, the Department of Parks and Recreation, and the State Board of Equalization as may be necessary to determine the owner's compliance with the contract.

(3) For it to be binding upon, and inure to the benefit of, all successors in interest of the owner. A successor in interest shall have the same rights and obligations under the contract as the original owner who entered into the contract.

(c) The owner or agent of an owner shall provide written notice of the contract to the Office of Historic Preservation within six months of entering into the contract.

50281.1. Fees.

The legislative body entering into a contract described in this article may require that the property owner, as a condition to entering into the contract, pay a fee not to exceed the reasonable cost of administering this program.

50282. Renewal.

(a) Each contract shall provide that on the anniversary date of the contract or such other annual date as is specified in the contract, a year shall be added automatically to the initial term of the contract unless notice of nonrenewal is given as provided in this section. If the property owner or the legislative body desires in any year not to renew the contract, that party shall serve written notice of nonrenewal of the contract on the other party in advance of the annual renewal date of the contract. Unless the notice is served by the owner at least 90 days prior to the renewal date or by the legislative body at least 60 days prior to the renewal date, one year shall automatically be added to the term of the contract.

(b) Upon receipt by the owner of a notice from the legislative body of nonrenewal, the owner may make a written protest of the notice of nonrenewal. The legislative body may, at any time prior to the renewal date, withdraw the notice of nonrenewal.

(c) If the legislative body or the owner serves notice of intent in any year not to renew the contract, the existing contract shall remain in effect for the balance of the period remaining since the original execution or the last renewal of the contract, as the case may be.

(d) The owner shall furnish the legislative body with any information the legislative body shall require in order to enable it to determine the eligibility of the property involved.

(e) No later than 20 days after a city or county enters into a contract with an owner pursuant to this article, the clerk of the legislative body shall record with the county recorder a copy of the contract, which shall describe the property subject thereto. From and after the time of the recordation, this contract shall impart a notice thereof to all persons as is afforded by the recording laws of this state.

50284. Cancellation.

The legislative body may cancel a contract if it determines that the owner has breached any of the conditions of the contract provided for in this article or has allowed the property to deteriorate to the point that it no longer meets the standards for a qualified historical property. The legislative body may also cancel a contract if it determines that the owner has failed to restore or rehabilitate the property in the manner specified in the contract.

50285. Consultation with state commission.

No contract shall be canceled under Section 50284 until after the legislative body has given notice of, and has held, a public hearing on the matter. Notice of the hearing shall be mailed to the last known address of each owner of property within the historic zone and shall be published pursuant to Section 6061.

50286. Cancellation.

(a) If a contract is canceled under Section 50284, the owner shall pay a cancellation fee equal to 121/2 percent of the current fair market value of the property, as determined by the county assessor as though the property were free of the contractual restriction.

(b) The cancellation fee shall be paid to the county auditor, at the time and in the manner that the county auditor shall prescribe, and shall be allocated by the county auditor to each jurisdiction in the tax rate area in which the property is located in the same manner as the auditor allocates the annual tax increment in that tax rate area in that fiscal year.

(c) Notwithstanding any other provision of law, revenue received by a school district pursuant to this section shall be considered property tax revenue for the purposes of Section 42238 of the Education Code, and revenue received by a county superintendent of schools pursuant to this section shall be considered property tax revenue for the purposes of Article 3 (commencing with Section 2550) of Chapter 12 of Part 2 of Division 1 of Title 1 of the Education Code.

50287. Action to enforce contract.

As an alternative to cancellation of the contract for breach of any condition, the county, city, or any landowner may bring any action in court necessary to enforce a contract including, but not limited to, an action to enforce the contract by specific performance or injunction.

50288. Eminent domain.

In the event that property subject to contract under this article is acquired in whole or in part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the legislative body to frustrate the purpose of the contract, such contract shall be canceled and no fee shall be imposed under Section 50286. Such contract shall be deemed null and void for all purposes of determining the value of the property so acquired.

50289. Annexation by city.

In the event that property restricted by a contract with a county under this article is annexed to a city, the city shall succeed to all rights, duties, and powers of the county under such contract.

50290. Consultation with state commission.

Local agencies and owners of qualified historical properties may consult with the State Historical Resources Commission for its advice and counsel on matters relevant to historical property contracts.

California Revenue and Taxation Code, Article 1.9, Sections 439 – 439.4

439. Historical Property Restrictions; enforceably restricted property.
For the purposes of this article and within the meaning of Section 8 of Article XIII of the Constitution, property is "enforceably restricted" if it is subject to an historical property contract executed pursuant to Article 12 (commencing with Section 50280) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code.

439.1. Historical Property; definitions.
For purposes of this article "restricted historical property" means qualified historical property, as defined in Section 50280.1 of the Government Code, that is subject to a historical property contract executed pursuant to Article 12 (commencing with Section 50280) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code. For purposes of this section, "qualified historical property" includes qualified historical improvements and any land on which the qualified historical improvements are situated, as specified in the historical property contract. If the historical property contract does not specify the land that is to be included, "qualified historical property" includes only that area of reasonable size that is used as a site for the historical improvements.

439.2. Historical Property; valuation.
When valuing enforceably restricted historical property, the county assessor shall not consider sales data on similar property, whether or not enforceably restricted, and shall value that restricted historical property by the capitalization of income method in the following manner:

- (a) The annual income to be capitalized shall be determined as follows:
 - (1) Where sufficient rental information is available, the income shall be the fair rent that can be imputed to the restricted historical property being valued based upon rent actually received for the property by the owner and upon typical rentals received in the area for similar property in similar use where the owner pays the property tax. When the restricted historical property being valued is actually encumbered by a lease, any cash rent or its equivalent considered in determining the fair rent of the property shall be the amount for which the property would be expected to rent were the rental payment to be renegotiated in the light of current conditions, including applicable provisions under which the property is enforceably restricted.
 - (2) Where sufficient rental information is not available, the income shall be that which the restricted historical property being valued reasonably can be expected to yield under prudent management and subject to applicable provisions under which the property is enforceably restricted.
 - (3) If the parties to an instrument that enforceably restricts the property stipulate therein an amount that constitutes the minimum annual income to be capitalized, then the income to be capitalized shall not be less than the amount so stipulated. For purposes of this section, income shall be determined in accordance with rules and

regulations issued by the board and with this section and shall be the difference between revenue and expenditures. Revenue shall be the amount of money or money's worth, including any cash rent or its equivalent, that the property can be expected to yield to an owner-operator annually on the average from any use of the property permitted under the terms by which the property is enforceably restricted. Expenditures shall be any outlay or average annual allocation of money or money's worth that can be fairly charged against the revenue expected to be received during the period used in computing the revenue. Those expenditures to be charged against revenue shall be only those which are ordinary and necessary in the production and maintenance of the revenue for that period. Expenditures shall not include depletion charges, debt retirement, interest on funds invested in the property, property taxes, corporation income taxes, or corporation franchise taxes based on income.

(b) The capitalization rate to be used in valuing owner-occupied single family dwellings pursuant to this article shall not be derived from sales data and shall be the sum of the following components:

(1) An interest component to be determined by the board and announced no later than September 1 of the year preceding the assessment year and that was the yield rate equal to the effective rate on conventional mortgages as determined by the Federal Housing Finance Board, rounded to the nearest 1/4 percent.

(2) A historical property risk component of 4 percent.

(3) A component for property taxes that shall be a percentage equal to the estimated total tax rate applicable to the property for the assessment year times the assessment ratio.

(4) A component for amortization of the improvements that shall be a percentage equivalent to the reciprocal of the remaining life.

(c) The capitalization rate to be used in valuing all other restricted historical property pursuant to this article shall not be derived from sales data and shall be the sum of the following components:

(1) An interest component to be determined by the board and announced no later than September 1 of the year preceding the assessment year and that was the yield rate equal to the effective rate on conventional mortgages as determined by the Federal Housing Finance Board, rounded to the nearest 1/4 percent.

(2) A historical property risk component of 2 percent.

(3) A component for property taxes that shall be a percentage equal to the estimated total tax rate applicable to the property for the assessment year times the assessment ratio.

(4) A component for amortization of the improvements that shall be a percentage equivalent to the reciprocal of the remaining life.

(d) Unless a party to an instrument that creates an enforceable restriction expressly prohibits the valuation, the valuation resulting from the capitalization of income method described in this section shall not exceed the lesser of either the valuation that would have resulted by calculation under Section 110, or the valuation that would have resulted by calculation under Section 110.1, as though the property was not subject to an enforceable restriction in the base year.

(e) The value of the restricted historical property shall be the quotient of the income determined as provided in subdivision (a) divided by the capitalization rate determined as provided in subdivision (b) or (c).

(f) The ratio prescribed in Section 401 shall be applied to the value of the property determined in subdivision (d) to obtain its assessed value.

439.3. Historical Property; notice of nonrenewal.

Notwithstanding any provision of Section 439.2 to the contrary, if either the county or city or the owner of restricted historical property subject to contract has served notice of nonrenewal as provided in Section 50282 of the Government Code, the county assessor shall value that restricted historical property as provided in this section.

(a) Following the hearing conducted pursuant to Section 50285 of the Government Code, subdivision (b) shall apply until the termination of the period for which the restricted historical property is enforceably restricted.

(b) The board or assessor in each year until the termination of the period for which the property is enforceably restricted shall do all of the following:

(1) Determine the full cash value of the property pursuant to Section 110.1. If the property is not subject to Section 110.1 when the restriction expires, the value shall be determined pursuant to Section 110 as if the property were free of contractual restriction. If the property will be subject to a use for which this chapter provides a special restricted assessment, the value of the property shall be determined as if it were subject to the new restriction.

(2) Determine the value of the property by the capitalization of income method as provided in Section 439.2 and without regard to the fact that a notice of nonrenewal or cancellation has occurred.

(3) Subtract the value determined in paragraph (2) of this subdivision by capitalization of income from the full cash value determined in paragraph (1).

(4) Using the rate announced by the board pursuant to paragraph (1) of subdivision (b) of Section 439.2, discount the amount obtained in paragraph (3) for the number of years remaining until the termination of the period for which the property is enforceably restricted.

(5) Determine the value of the property by adding the value determined by the capitalization of income method as provided in paragraph (2) and the value obtained in paragraph (4).

(6) Apply the ratios prescribed in Section 401 to the value of the property determined in paragraph (5) to obtain its assessed value.

439.4. Historical Property; recordation.

No property shall be valued pursuant to this article unless an enforceable restriction meeting the requirements of Section 439 is signed, accepted and recorded on or before the lien date for the fiscal year in which the valuation would apply.

COUNCIL POLICY**CURRENT**

SUBJECT: MILLS ACT AGREEMENTS FOR PRESERVATION OF HISTORIC
PROPERTY
POLICY NO.: 700-46
EFFECTIVE DATE: July 18, 1995

BACKGROUND:

California state law authorizes cities to enter into contracts (“Mills Act Agreements”) with the owners of qualified historical properties to provide a property tax reduction for the use, maintenance and restoration of historically designated properties. The minimum requirements for a Mills Act Agreement, as mandated by state law include:

- 1) Minimum contract term of ten (10) years, automatically renewable on an annual basis, to be recorded against title to the property and running with the land.
- 2) Owner shall maintain the regulated characteristics of historical significance of the Historic Site in accordance with the rules and regulations published by the Secretary of the Interior.
- 3) Owner must allow reasonable periodic examination of the Historic Site, if a request is made and by prior appointment, by representatives of the County Assessor, State Department of Parks and Recreation and the State Board of Equalization.
- 4) City may cancel the agreement following a duly notice public hearing if it is determined that the owner breached any mandatory conditions of the Contract.

PURPOSE:

This policy is adopted to provide a monetary incentive to the owners of historically designated properties in the form of a property tax reduction for the maintenance, restoration and rehabilitation of historic properties within the City of San Diego. A properly recorded Mills Act Agreement automatically triggers an alternative method for determining the assessed value of the affected historic property, thus potentially resulting in significant property tax savings for the owner of the historic property.

POLICY:

It is the policy of the City of San Diego to foster and encourage the preservation, maintenance, rehabilitation and restoration of historically designated properties. It is recognized by the City that a reduction in property taxes afforded by the Mills Act will serve as a key monetary incentive for citizens to acquire, maintain and restore historic property within the City of San Diego. However, it is also recognized that the revitalization goals of the Mills Act may overlap and conflict with the neighborhood revitalization mission, goals, policies and programs of the Redevelopment Agency of the City of San Diego. Because of the negative impact on tax increment financing and other measures available to promote historic preservation through redevelopment, Mills Act Agreements shall be applied in redevelopment project and study areas as delineated below.

IMPLEMENTATION:

CP-700-46

1. Areas Outside of Redevelopment Project Areas and Study Areas

The City Manager or designee is authorized to enter into a Mills Act Agreement with the owner of any historically designated property, upon application by the owner and subject to the following restrictions:

- A) The contract shall contain the minimum mandatory conditions required by state law.
- B) The owner shall pay a graduated processing fee of \$100 per \$100,000 of assessed value prorated to actual value, however in no event shall the processing fee exceed the actual cost of processing and recording the Agreement.
- C) A drive by inspection will be performed on a periodic basis by City staff to verify that the structure is being maintained in weather tight condition.
- D) The Owner must allow visibility of the exterior of the structure from the public right-of-way.

2. Areas Within Redevelopment Project Areas and Study Areas

The City Manager or designee is authorized to enter into a Mills Act Agreement with the owner of a historically designated property located within a redevelopment project or study area, upon application by the owner, subject to the above restrictions, and including:

Redevelopment Study Areas

Within a Redevelopment Study Area Mills Act Agreements shall be permitted in conformance with this City Council Policy 700-46 and State law requirements, until adoption of the redevelopment project area. Within the Sherman Heights and Grant Hill Historic Districts, however, should they become part of a redevelopment project area, Mills Act Agreements shall be implemented as in item 1 above.

Redevelopment Project Areas

Within a redevelopment project area, with the exception of the College Community Redevelopment Project Area, Mills Act Agreements shall be permitted as follows:

- 1. Owner-occupied single-family homes (including properties which may have a second residential unit) shall be eligible for Mills Act Agreements, in conformance with this City Council Policy 700-46 and state law requirements.
- 2. All other properties shall be eligible for Mills Act Agreements, in conformance with this City Council Policy 700-46 and State law requirements, on a case by case basis and only when all of the following criteria are met:
 - (1) The property requires rehabilitation
 - (2) The owner agrees to rehabilitate the property in accordance with plans approved by the Agency

(3) The owner demonstrates through a project proforma, which is independently evaluated by the Agency, that a Mills Act Agreement is necessary to achieve a financially feasible project, and the Agency concurs that a Mills Act Agreement is the appropriate form of public financial assistance.

No Mill Act Agreement shall be implemented within the College Community Redevelopment Project Area.

The City Manager shall report on annual basis to the City Council with respect to the number of Mills Act Agreements executed and the effectiveness of the program.

CROSS REFERENCE:

San Diego Municipal Code Section 26.0201, et seq.
Government Code Sections 50280, et seq.

HISTORY:

Adopted by Resolution R-285410 02/27/1995
Amended by Resolution R-286051 07/18/1995

Issues Raised on Proposed Mills Act Policy Changes with City Response and Alternatives

Issues were raised by homeowners, preservation professionals, Historical Resources Board Members, and general public orally at meetings and workshops and in writing. Responses to these issues address the City’s position and provide background on the issue. Alternatives that could be implemented to address the issue are suggested.

Issue No.	Issue	Response	Alternatives to Address Issue		
			#A	#B	#C
1	Why change the existing Mills Act Policy?	Current policy is 12 years old and overall historic preservation program has significantly changed, specifically now have regulations and review for preservation; promote Mills Act incentives for properties in need of rehabilitation or restoration and in low and moderate income areas; monitoring of properties to assure compliance with contract; tailored agreements to show tax savings re-invested in property; and need to understand and manage the fiscal impact on an annual basis.	Make comprehensive changes to focus program on rehabilitation needs and in areas of low and moderate income households, add monitoring requirements, tailor agreements to each property, and manage fiscal impacts of program	Make limited changes to add monitoring requirements, tailor agreements to each property	Make no changes
2	How will changes affect nominations already submitted?	Revised policy can include pipeline provisions for properties already in process related to an annual limit and new eligibility requirements. Pipeline provisions would not apply to the application deadline, Mills Act requirements (tailored agreements), inspection schedule, and fees.	Pipeline provisions apply to all designated properties and all nominations submitted before effective date of policy changes.	Pipeline provisions apply only to properties designated before effective date of policy changes.	No pipeline provisions.
3	This is the only incentive for single family home owners.	HRB Incentives Subcommittee has been established to address General Plan policies encouraging use of incentives.	Increase the number and type of non-fiscal incentives at same time as changes are made to Mills Act policy.	Follow changes to Mills Act policy with additional non-fiscal incentives.	No new incentives
4	Annual limit will reduce protections for historic sites.	Protections provided through historical resources regulations would not change.	See Alternative 8A	See Alternative 8B	See Alternative 8C
5	Additional eligibility criteria will effectively eliminate program because few if any buildings would qualify.	Intent of eligibility criteria is to address other General Plan policies through the directed use of new Mills Act contracts and prioritize new contracts for properties that are in immediate need of rehabilitation or restoration efforts; help to achieve citywide housing needs; when ordinary maintenance of a historic property is economically prohibitive; and that support reinvestment in historic property.	Require properties to meet at least one of the eligibility requirements in order to enter into a new Mills Act contract	Use the eligibility requirements to prioritize issuance of new contracts	No additional eligibility requirements for Mills Act contracts

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6	Proposed fees are too high.	Proposed fees are best estimate of staff time required to complete tasks (cost recovery fee).	Full cost recovery with regular review and adjustment based on actual costs	Arbitrary fee that would be less than cost recovery	Minimal fee and no increase in program (no monitoring)
7	Losing important historic buildings causes negative impact on neighborhoods.	Mills Act is an incentive to achieve preservation of individual buildings; additional incentives and programs are needed to address retention of neighborhood character, such as conservation areas with established design guidelines	Conservation areas and other tools to address neighborhood character needed as part of community plan updates	Conservation areas and other tools to address neighborhood character may be implemented in advance of community plan updates if warranted	Do not address neighborhood character
8	Fiscal impact of Mills Act tax reduction is minimal compared to overall benefits of historic preservation.	Although minimal in overall City budget, important to understand the impact and manage it on an annual basis. Current loss is \$1,126,073 yearly to general fund from 885 Mills Act contracts.	Set an annual fiscal limit for new revenue loss to the general fund. For example, a limit of \$100,000 to \$150,000 new loss would result in an average of 78 to 118 new contracts yearly.	Set an annual limit in the number of new Mills Act contracts. For example, a limit of 75 new yearly contracts would result in an average new loss to the general fund of \$95,400 yearly	Set no limit and do not manage the fiscal impact to the City's general fund
9	Cost of maintaining historic house is greater than for a non-historic house.	Mills Act tax reduction helps to offset the costs – average savings to property owners is \$7,485 yearly	Limit additional incentives to non-fiscal impacts.	Evaluate ability to provide additional fiscal incentives to offset maintenance costs.	No new incentives
10	Need to make sure that low and moderate income neighborhoods can benefit from the Mills Act program.	Guidelines have been prepared to assist homeowners with historic designation process, reducing the costs for consultants. Establishing historic districts can bring many more properties into the preservation program and allow owners to benefit from the Mills Act.	City take lead in establishing historic districts in areas with low and moderate income households and prioritize new Mills Act contracts for these owners	Work with non-profits and create public/private sponsorship programs to support historic preservation for low and moderate income property owners	Do not prioritize Mills Act contracts for property owners in low and moderate income neighborhoods

Summary of Existing Mills Act Program and Proposed Changes to the Mills Act Program

Existing Program	Proposed Change to Mills Act Program as Recommended by Staff	Implementation of Proposed Change	Affect of the Proposed Change		
			Historic Designation Nominations Submitted <u>after</u> Effective date of Change	Historic Designation Nominations Submitted <u>prior to</u> Effective date of Change	<u>Existing</u> Mills Act Agreement property owners
Annual Limit on New Agreements					
No limits	Set an annual fiscal limit for new revenue loss to the general fund. For example, a limit of \$100,000 to \$150,000 new loss would result in an average of 78 to 118 new contracts yearly. There is no aggregate limit proposed.	The number of new agreements would be limited annually on a fiscal basis. If more applications were submitted than could be accommodated under the limit, the property owner would have the option of applying in a subsequent year.	Annual limits would be applicable to all properties submitted for historic designation after the effective date of the change	Annual limits would not apply to Historic Designation Nominations submitted prior to the effective date of the change.	Annual limits would not apply to existing agreements.
Eligibility Requirements					
All designated properties are eligible (inside Redevelopment Area is discretionary)	Designation by December 31 of previous year and meets at least one of the following criteria where granting an agreement would: <div>1. substantially contribute to the preservation of a historical resource threatened by deterioration or abandonment;</div> <div>2. enhance opportunities for maintaining or creating affordable housing;</div> <div>3. facilitate preservation and maintenance of a property in cases of economic hardship; or</div> <div>4. support substantial reinvestment in a historical resource and/or rehabilitation of a historical building or structure</div> Retain discretion within Redevelopment Areas	Historic designation would have to occur no later than December 31 of the year preceding the application for a Mills Act agreement and the property owner would be required to demonstrate how a Mills Act agreement would meet at least one of the eligibility requirements. <div>1. “Substantially contribute to the preservation of a historical resource threatened by deterioration or abandonment.” This requirement can be met by an owner who purchases an already designated property that has not been properly maintained or has been abandoned by previous owners. Rehabilitation and/or restoration consistent with the Secretary of the Interior’s Standards would be required. This eligibility requirement would have the highest priority due to the importance of maintaining and preserving designated historical resources. It is not anticipated that many new agreements would meet this requirement.</div> <div>2. “Enhance opportunities for maintaining or creating affordable housing.” This eligibility requirement can be met by an owner who is participating in an affordable housing program or who will maintain</div>	Eligibility requirements would be applicable to Historic Designation Nominations submitted after the effective date of the change.	Eligibility requirements would not apply to Historic Designation Nominations submitted prior to the effective date of the change.	Eligibility requirements would not apply to existing agreements.

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			Historic Designation Nominations Submitted <u>after</u> Effective date of Change	Historic Designation Nominations Submitted <u>prior to</u> Effective date of Change	<u>Existing</u> Mills Act Agreement property owners
		<p>affordable units throughout the life of the agreement. It is not anticipated that many new agreements would meet this requirement.</p> <p>3. “Facilitate preservation and maintenance of a property in cases of economic hardship.” This eligibility requirement could be met by an owner of any income level that can demonstrate substantial cost for necessary maintenance or rehabilitation of a designated historical resource when compared to the property value or other financial consideration that would indicate hardship. It is not anticipated that many new agreements would meet this requirement.</p> <p>4. “Support substantial reinvestment in a historical resource and/or rehabilitation of a historical building or structure.” This eligibility requirement could be met by an owner showing that a substantial portion of their anticipated property tax savings will be reinvested in the historic property over time. An estimate of the property tax savings from the County Tax Assessor’s office and a cost estimate of needed maintenance, repairs and/or rehabilitation work would be needed. It is anticipated that most historic properties would be eligible for a Mills Act agreement under this eligibility requirement.</p>			
Application Deadline					
October 1 of each year	March 31 of each year	To allow sufficient time for the fiscal impacts of new agreements to be included in the annual City budget process, owners of historically designated properties would be required to submit an application for a Mills Act agreement no later than March 31 to be considered that year.	This deadline would apply to all Mills Act applications.	This deadline would apply to all Mills Act applications.	This deadline would not be applicable to properties with Mills Act agreements.
Mills Act Agreement Requirements					
Visibility of the resource and site specific conditions	10-year tailored agreement with annual renewal for every property to achieve necessary rehabilitation or restoration plan; visibility of resource	Owners of designated historic properties would be required to include a 10-year maintenance and rehabilitation/restoration plan at the time of application for a Mills Act agreement. All Mills Act properties are required to be visible from the public right-of-way. This requirement is not proposed for change.	These requirements would apply to properties when nominations are submitted after the effective date of the change.	These requirements would apply to properties currently awaiting review for designation.	Owners of historic properties may be required to include a maintenance or rehabilitation/restoration plan at the time of renewal.

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			Historic Designation Nominations Submitted <u>after</u> Effective date of Change	Historic Designation Nominations Submitted <u>prior to</u> Effective date of Change	<u>Existing</u> Mills Act Agreement property owners
Inspection Schedule					
Informal monitoring conducted by staff during routine site visits and in response to community inquiries.	Prior to new agreement and every 5 years (prior to renewal date)	A formal schedule for inspections and monitoring of Mills Act properties would be established by staff and conducted to assure compliance with the provisions of the agreement. Staff would work with property owners to remedy any problems identified through the inspection process. A maintenance and/or rehabilitation/restoration plan may be prepared as part of a renewal of an agreement to assure the necessary remedy.	These requirements would apply to properties when nominations are submitted after the effective date of the change.	These requirements would apply to properties currently awaiting review for designation.	These requirements would apply to properties with existing Mills Act agreements.
Fees					
\$100 for every \$100k of assessed value, up to a max of \$400	\$590 for agreement (one time); \$492 monitoring fee paid at time of agreement and every 5 years \$949 enforcement fee only if needed	Following historic designation, a property owner would be required to pay a one-time Mills Act agreement fee with their application. A monitoring fee would be required at the time of recordation of the Mills Act agreement and every 5 years thereafter. An enforcement fee of would be required only in cases of non-compliance with the agreement.	All proposed fees would apply	All proposed fees would apply	Monitoring fee would be applied to existing agreements at time of renewal. Enforcement fee would be applied only as needed.